

X. COMMERCIAL MOBILE RADIO SERVICE INTERCONNECTION

999. In the NPRM, we sought comment on whether interconnection arrangements between incumbent LECs and CMRS providers fall within the scope of sections 251 and 252. Application of sections 251 and 252 to LEC-CMRS interconnection arrangements involves two distinct issues. One is whether the terms and conditions of the physical interconnection between incumbent LECs and CMRS providers are governed under section 251(c)(2), and the corresponding pricing standards set forth in section 252(d)(1). The second, and perhaps more critical issue from the CMRS providers' perspective, is whether CMRS providers are entitled to reciprocal compensation for transport and termination under section 251(b)(5), and the corresponding pricing standards set forth in section 252(d)(2).²³⁵²

1000. We tentatively concluded in the NPRM that CMRS providers are not obliged to provide to requesting telecommunications carriers either reciprocal compensation for transport and termination of telecommunications under section 251(b)(5), or interconnection under the provisions of section 251(c)(2), but that CMRS providers may be entitled to request interconnection under section 251(c)(2) for the purposes of providing "telephone exchange service and exchange access."²³⁵³ We sought comment on this tentative conclusion. We also asked for comment on the separate but related question of whether LEC-CMRS transport and termination arrangements fall within the scope of section 251(b)(5). In addition, we sought comment on the relationship between section 251 and section 332(c).²³⁵⁴ We acknowledged that issues relating to LEC-CMRS interconnection pursuant to section 332(c) were part of an ongoing proceeding initiated before the passage of the 1996 Act²³⁵⁵ and retained the prerogative of incorporating by reference the comments filed in that docket to the extent necessary. We hereby do so.

²³⁵² 47 U.S.C. §§ 251, 252.

²³⁵³ 47 U.S.C. §§ 251(b)(5), 251(c)(2).

²³⁵⁴ 47 U.S.C. § 332(c). This section sets forth the regulatory treatment for mobile services, including the common carrier treatment of CMRS providers (except for such provisions of Title II as the Commission may specify), the right of CMRS providers to request (and the Commission to order) physical interconnection with other common carriers and the preemption of state regulation of the entry of or the rates charged by any CMRS providers.

²³⁵⁵ *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, CC Docket No. 95-185, 11 FCC Rcd 5020 (1996) (*LEC-CMRS Interconnection NPRM*).

A. CMRS Providers and Obligations of Local Exchange Carriers Under Section 251(b) and Incumbent Local Exchange Carriers Under Section 251(c).

1. Background

1001. Section 251(b) imposes duties only on LECs, and section 251(c) imposes duties only on incumbent LECs. Section 3(26) of the Act defines "local exchange carrier" to mean "any person that is engaged in the provision of telephone exchange service or exchange access," but "does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term."²³⁵⁶ In the NPRM, we sought comment on whether, and to what extent, CMRS providers should be classified as "local exchange carriers" and therefore subject to the duties and obligations imposed by section 251(b).

2. Comments

1002. Most of the comments on this issue urge that CMRS providers should not be classified as LECs.²³⁵⁷ Some commenters assert that CMRS was expressly excluded from the definition of a LEC in section 3(a)(2)(44) of the 1996 Act and that the legislative history confirms that Congress intended that the Commission reconsider whether CMRS providers should be classified as LECs only if "future circumstances warrant."²³⁵⁸ PCIA maintains that there is no basis for classifying CMRS providers as LECs, because CMRS is not yet a substitute for wireline local exchange service for a substantial number of subscribers, and because CMRS licensees lack the control over essential facilities that underlies the adoption of Section 251.²³⁵⁹ Pronet contends that paging operators do not provide local exchange services, and that Congress did not contemplate treating CMRS providers as LECs.²³⁶⁰ Some CMRS providers propose that the Commission apply the criteria in section 332(c)(3) in considering whether a CMRS provider should be classified as a LEC -- that the service is a replacement

²³⁵⁶ 47 U.S.C. § 153(26).

²³⁵⁷ 360 Communications comments at 9; Airtouch comments at 9; Bell Atlantic/NYNEX Mobile comments at 5; F. Williamson comments at 8-9; Cox comments at 50-51; PCIA comments at 16.

²³⁵⁸ See, e.g., Airtouch reply at 4-6 (citing H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 115 (1996)); PCIA reply at 6; Bell Atlantic/NYNEX Mobile comments at 4-5; PCIA comments at 16; GTE reply at 40 (Commission already found that CMRS providers should not be regulated as LECs for the purpose of interconnection and the 1996 Act does nothing to alter this conclusion).

²³⁵⁹ PCIA comments at 17; accord Nextel comments at 6.

²³⁶⁰ Pronet comments at 8.

for a substantial portion of the wireline telephone exchange service within a state.²³⁶¹ Nextel argues that a CMRS provider should not be classified as a LEC until it has become a substitute for a land-line telephone exchange service for a substantial portion of the communications within a state.²³⁶² Omnipoint states that application of the section 332(c)(3) test will permit CMRS providers, which are also small businesses, to be relieved of LEC-type regulatory burdens during their initial entry years, so that they can act as "spirited, if smaller" competitors to the incumbent LEC.²³⁶³ The Ohio Commission contends that the Commission should consider market share, diversity of network, and name recognition in classifying CMRS providers as LECs.²³⁶⁴

1003. COMAV and National Wireless Resellers Association, on the other hand, contend that CMRS entities can provide exchange and exchange access services "and thus are *de facto*" LECs.²³⁶⁵ COMAV also argues that, if a CMRS provider is a subsidiary of an incumbent LEC, it should be treated as an incumbent LEC, and thus be required to unbundle and allow direct interconnection.²³⁶⁶ NARUC argues that the type of service provided, rather than the technology employed, should determine the appropriate regulatory treatment, and that a CMRS provider should therefore be treated as a LEC if it provides fixed local service.²³⁶⁷ The Illinois Commission similarly indicates that a CMRS provider should be regulated as a LEC when it establishes a wireless local loop for the express purpose of competing against or bypassing the landline loop.²³⁶⁸

3. Discussion

1004. We are not persuaded by those arguing that CMRS providers should be treated as LECs, and decline at this time to treat CMRS providers as LECs. Section 3(26) of the Act, quoted above, makes clear that CMRS providers should not be classified as LECs until the Commission makes a finding that such treatment is warranted. We disagree with

²³⁶¹ Cox comments at 51 n.96; Omnipoint comments at 2; Vanguard comments at 21; BellSouth comments at 70; 360 Communications comments at 9; Bell Atlantic/NYNEX Mobile comments at 5.

²³⁶² Nextel reply at 2.

²³⁶³ Omnipoint comments at 3-4.

²³⁶⁴ Ohio Commission comments at 68.

²³⁶⁵ COMAV comments at 2; National Wireless Resellers Assn comments at 7-10.

²³⁶⁶ COMAV comments at 2, 40-43.

²³⁶⁷ NARUC comments at 21.

²³⁶⁸ Illinois Commission comments at 63-64.

COMAV and National Wireless Resellers Association that CMRS providers are *de facto* LECs (and even incumbent LECs if they are affiliated with a LEC) simply because they provide telephone exchange and exchange access services. Congress recognized that some CMRS providers offer telephone exchange and exchange access services, and concluded that their provision of such services, by itself, did not require CMRS providers to be classified as LECs. We further note that, because the determination as to whether CMRS providers should be defined as LECs is within the Commission's sole discretion, states are preempted from requiring CMRS providers to classify themselves as "local exchange carriers" or be subject to rate and entry regulation as a precondition to participation in interconnection negotiations and arbitrations under sections 251 and 252.

1005. NARUC argues that CMRS providers should be classified as LECs if they provide fixed service.²³⁶⁹ We are currently seeking comment in our *CMRS Flexibility Proceeding*²³⁷⁰ on the regulatory treatment to be afforded CMRS providers when they provide fixed services. Thus, we believe that it would be premature to answer that question here, based only on the record in this proceeding. We also decline to adopt the Illinois Commission's suggestion that we find that a CMRS provider is a LEC if the CMRS provider seeks to compete directly with a wireline LEC. Even if we were to accept the Illinois Commission's underlying assumption, the record in this proceeding contains no evidence that wireless local loops have begun to replace wireline loops for the provision of local exchange service. Thus, until such time that we decide otherwise, CMRS providers will not be classified as LECs, and are not subject to the obligations of section 251(b). We further note that, even if we were to classify some CMRS providers as LECs, other types of CMRS providers, such as paging providers, might not be so classified because they do not offer local exchange service or exchange access.

1006. We further note that, because CMRS providers do not fall within the definition of a LEC under section 251(h)(1), they are not subject to the duties and obligations imposed on incumbent LECs under section 251(c).²³⁷¹ An incumbent LEC is defined in section 251(h)(1), and includes only those LECs that were, on the date of enactment of the 1996 Act, deemed to be members of NECA pursuant to 47 C.F.R. § 69.601(b), or the successor or assign of a NECA member. Similarly, we do not find that CMRS providers satisfy the criteria set forth in section 251(h)(2), which grants the Commission the discretion to, by rule,

²³⁶⁹ NARUC comments at 21.

²³⁷⁰ *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96-6, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-283 (released August 1, 1996).

²³⁷¹ 47 U.S.C. § 251(h)(1). See *infra*, Section XI.C.

provide for the treatment of a LEC as an incumbent LEC if certain conditions are met.²³⁷²

B. Reciprocal Compensation Arrangements Under Section 251(b)(5)

1007. Some parties contend that LEC-CMRS transport and termination arrangements do not fall within the scope of 251(b)(5), which requires LECs to establish reciprocal compensation arrangements for transport and termination.²³⁷³ Other commenters argue that because CMRS providers fall within the definition of "telecommunications carriers," they fall within the scope of section 251(b)(5).²³⁷⁴

1008. Under section 251(b)(5), LECs have a duty to establish reciprocal compensation arrangements for the transport and termination of "telecommunications."²³⁷⁵ Under section 3(43), "[t]he term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."²³⁷⁶ All CMRS providers offer telecommunications. Accordingly, LECs are obligated, pursuant to section 251(b)(5) (and the corresponding pricing standards of section 252(d)(2)), to enter into reciprocal compensation arrangements with all CMRS providers, including paging providers, for the transport and termination of traffic on each other's networks, pursuant to the rules governing reciprocal compensation set forth in Section XI.B., below.

C. Interconnection Under Section 251(c)(2)

1. Background

1009. Section 251(c)(2)(A) provides that an incumbent LEC must provide interconnection with its local exchange network to "any requesting telecommunications carrier . . . for the transmission and routing of telephone exchange service and exchange access."²³⁷⁷ In the NPRM, we tentatively concluded that CMRS providers may be entitled to request interconnection under section 251(c)(2) for the purposes of providing telephone exchange

²³⁷² 47 U.S.C. § 251(h)(2). See *infra*, Section XI.C.

²³⁷³ PCIA comments at 13; PageNet comments at 10; APC comments at 1.

²³⁷⁴ BellSouth comments at 63; National Wireless Resellers Assn comments at 7; Mobilemedia comments at 13.

²³⁷⁵ 47 U.S.C. § 251(b)(5).

²³⁷⁶ 47 U.S.C. § 153(43).

²³⁷⁷ 47 U.S.C. § 251(c)(2)(A).

service and exchange access.²³⁷⁸ We sought comment on this tentative conclusion.

2. Comments

1010. Several commenters argue that many CMRS providers provide telephone exchange service and exchange access as defined by the 1996 Act, and thus section 251(c)(2) should govern their interconnection arrangements with incumbent LECs.²³⁷⁹ NYNEX contends that all CMRS providers, other than providers of one-way paging, provide telephone exchange service.²³⁸⁰ The Ohio Commission contends that all voice grade CMRS providers which provide local exchange service may request interconnection under section 251(c)(2).²³⁸¹ The Pennsylvania Commission argues that all voice-grade and non-voice grade CMRS providers fit within the definition of telecommunications carriers and fall within the parameters of section 251(c)(2).²³⁸²

1011. Many wireless carriers argue that interconnection arrangements between incumbent LECs and CMRS providers do not fall within the scope of section 251(c)(2).²³⁸³ CTIA claims that CMRS was intended to be regulated differently than other services because it entails different traffic flows and different termination costs.²³⁸⁴ Airtouch claims that, if LEC-CMRS interconnection were found to fall within the scope of section 251, the concept of "local exchange areas" could create implementation problems and adverse policy results, thus supporting application of section 332(c)(1)(B).²³⁸⁵

²³⁷⁸ 47 U.S.C. § 251(c)(2).

²³⁷⁹ See, e.g., Pennsylvania Commission comments at 34; PacTel comments at 83; Bell Atlantic/NYNEX Mobile comments at 7; Nextel comments at 6-7; API comments at 3; Florida Commission comments at 35-36.

²³⁸⁰ NYNEX comments at 23.

²³⁸¹ Ohio Commission comments at 59.

²³⁸² Pennsylvania Commission comments at 34.

²³⁸³ See, e.g., AT&T comments at 43; Sprint comments at 70; Bell Atlantic/NYNEX Mobile comments at 2; CTIA comments at 2-3; Nextel comments at 5-6; Omnipoint comments at 3-5; Vanguard comments at 20-22; MECA comments at 59; Arch comments at 12-13; Airtouch reply at 3; Sprint/APC comments at 2-3 (Congress crafted a definition of "local exchange carrier" that excluded CMRS indicating that it did not want CMRS providers treated with all providers of telecommunications services). Sprint/APC claim in their joint comments that it is clear from the 1996 Act as a whole, and from section 332(c), that CMRS providers are entitled to reasonable interconnection from LECs without regard to section 251. Sprint/APC comments at 5.

²³⁸⁴ CTIA comments at 7; Sprint/APC comments at 3.

²³⁸⁵ Airtouch reply at 7.

3. Discussion

1012. As discussed in the preceding section, CMRS providers meet the statutory definition of "telecommunications carriers."²³⁸⁶ We also agree with several commenters that many CMRS providers (specifically cellular, broadband PCS and covered SMR) also provide telephone exchange service and exchange access as defined by the 1996 Act. Incumbent LECs must accordingly make interconnection available to these CMRS providers in conformity with the terms of sections 251(c) and 252, including offering rates, terms, and conditions that are just, reasonable and nondiscriminatory.²³⁸⁷

1013. The 1996 Act defines "telephone exchange service" as "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area . . . and which is covered by the exchange service charge, or (B) *comparable service* provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service."²³⁸⁸ At a minimum, we find that cellular, broadband PCS, and covered SMR providers fall within the second part of the definition because they provide "comparable service" to telephone exchange service. The services offered by cellular, broadband PCS, and covered SMR providers are comparable because, as a general matter, and as some commenters note, these CMRS carriers provide local, two-way switched voice service as a principal part of their business.²³⁸⁹ Indeed, the Commission has described cellular service as exchange telephone service²³⁹⁰ and cellular carriers as "generally engaged in the provision of local exchange telecommunications in conjunction with local telephone companies"²³⁹¹ In addition, although CMRS providers are not currently classified as LECs, the fact that most

²³⁸⁶ See *supra*, Section IX.

²³⁸⁷ 47 U.S.C. § 251(c)(2)(D).

²³⁸⁸ 47 U.S.C. § 153(47) (emphasis added). This is a broader definition of "telephone exchange service" than had previously existed; Congress changed the definition in the 1996 Act to include services "comparable" to telephone exchange.

²³⁸⁹ See, e.g., NYNEX comments at 23.

²³⁹⁰ See *Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carriers*, Memorandum Opinion and Order, 59 Rad. Reg. 2d 1275, 1278 (1986).

²³⁹¹ *In the Matter of the Need to Promote Competition and Efficient Use of Spectrum For Radio Common Carrier Services*, Memorandum Opinion and Order, 59 Rad. Reg. 2d 1275, 1278 (1986) (*Competition Opinion*); see also *id.* at 1284 (cellular carriers are primarily engaged in the provision of local, intrastate exchange telephone service); *Equal Access and Interconnection Obligations Pertaining to Commercial Radio Services*, CC Docket No. 94-54, Notice of Proposed Rulemaking and Notice of Inquiry, 9 FCC Rcd 5408, 5453 and nn.192, 195 (and cases cited therein) (1994).

CMRS providers are capable, both technically and pursuant to the terms of their licenses, of providing fixed services, as LECs do, buttresses our conclusion that these CMRS providers offer services that are "comparable" to telephone exchange service and supports the notion that these services may become a true economic substitute for wireline local exchange service in the future.²³⁹²

1014. We also believe that other definitions in the Act support the conclusion that cellular, broadband PCS, and covered SMR licensees provide telephone exchange service. The fact that the 1996 Act's definition of a LEC excludes CMRS until the Commission finds that such service should be included in the definition,²³⁹³ suggests that Congress found that some CMRS providers were providing telephone exchange service or exchange access, but sought to afford the Commission the discretion to decide whether CMRS providers should be treated as LECs under the new Act. Similarly, section 253(f) permits the states to impose certain obligations on "telecommunications carrier[s] that seek[] to provide telephone exchange service" in rural areas.²³⁹⁴ The provision further provides that "[t]his subsection shall not apply . . . to a provider of commercial mobile services."²³⁹⁵ It would have been unnecessary for the statute to include this exception if some CMRS were not telephone exchange service. Similarly, section 271(c)(1)(A), which sets forth conditions for determining the presence of a facilities-based competitor for purposes of BOC applications to provide in-region, interLATA services, provides that Part 22 [cellular] services "shall not be considered to be telephone exchange services," for purposes of that section.²³⁹⁶ Again, if Congress did not believe that cellular providers were engaged in the provision of telephone exchange service, it would not have been necessary to exclude cellular providers from this provision.

1015. The arguments that CMRS traffic flows may differ from wireline traffic, that CMRS providers' termination costs may differ from LECs, that CMRS service areas do not coincide with wireline local exchange areas, or that CMRS providers are not LECs, do not

²³⁹² See *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96-6, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-283 (released August 1, 1996) (amending rules to allow providers of narrowband and broadband PCS, cellular, CMRS SMR, CMRS paging, CMRS 220 MHz service, and for-profit interconnected business radio services to offer fixed wireless services on their assigned spectrum on a co-primary basis with mobile services).

²³⁹³ 47 U.S.C. § 153(26).

²³⁹⁴ 47 U.S.C. § 253(f).

²³⁹⁵ *Id.*

²³⁹⁶ 47 U.S.C. § 271(c)(1)(A).

alter our conclusion that cellular, broadband PCS, and covered SMR licensees provide telephone exchange service. These considerations are not relevant to the statutory definition of telephone exchange service in section 3(47). Incumbent LECs are required to provide interconnection to CMRS providers who request it for the transmission and routing of telephone exchange service or exchange access, under the plain language of section 251(c)(2).²³⁹⁷

D. Jurisdictional Authority for Regulation of LEC-CMRS Interconnection Rates

1. Background

1016. In the NPRM, we sought comment on the relationship between section 251 and section 332(c).²³⁹⁸ As noted above, we hereby incorporate by reference the comments filed in CC Docket No. 95-185 to the extent relevant to our analysis. In the NPRM, we noted that we had previously sought comment on the relationship of these two statutory provisions in the LEC-CMRS Interconnection proceeding.²³⁹⁹ In the LEC-CMRS proceeding, we tentatively concluded that the Commission has sufficient authority to promulgate specific federal requirements for interstate and intrastate LEC-CMRS interconnection arrangements, including the adoption of a specific interim bill and keep arrangement.²⁴⁰⁰ However, we reached that tentative conclusion before the enactment of the 1996 Act.

2. Comments

1017. Several wireless firms argue that LEC-CMRS interconnection rates are governed by section 332 rather than (or in addition to) sections 251 and 252.²⁴⁰¹ One argument advanced by some parties is that section 251(i), which provides that "[n]othing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201,"²⁴⁰² preserves the Commission's authority over interstate interconnection under

²³⁹⁷ 47 U.S.C. § 251(c)(2).

²³⁹⁸ 47 U.S.C. § 332.

²³⁹⁹ NPRM at para. 169.

²⁴⁰⁰ *Id.* at 5072-73.

²⁴⁰¹ See, e.g., AT&T comments at 42; Airtouch comments at 5; Cox comments at 50; CTIA reply at 2; PCIA comments at 3-9.

²⁴⁰² 47 U.S.C. § 251(i).

section 201.²⁴⁰³ Thus, they argue, section 251(i) enables the Commission to not apply sections 251 and 252 whenever interstate services are at issue.²⁴⁰⁴ Cox states that, because "Section 251 does not prevent the Commission from establishing an interconnection policy for LEC-to-CMRS traffic under its general Section 201 powers, Section 252 has no particular relevance for any interconnection policy established by this proceeding."²⁴⁰⁵

1018. Another theory proposed by several wireless carriers is that section 332 makes all CMRS interconnection issues interstate, including interconnection rates, and thus all CMRS interconnection matters are subject to federal jurisdiction under section 201, and are not governed by sections 251 and 252.²⁴⁰⁶ These parties assert that, prior to the 1993 Budget Act, the Commission did not exercise any authority over the intrastate rates of LEC interconnection provided to radio common carriers, but that the 1993 Budget Act changed the Commission's jurisdiction over LEC-CMRS interconnection rates.²⁴⁰⁷ Parties rely on two provisions amended or added by the 1993 Budget Act to reach this conclusion. First, they point to section 332(c)(3), entitled "State Preemption," which provides in pertinent part that "[n]otwithstanding section[] 2(b) . . . , no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services."²⁴⁰⁸ Second, commenters point to a limiting clause added to section 2(b), which provides that: "[e]xcept as provided in section 223 through 227, inclusive, and section 332 . . . , nothing in this Act shall be construed to apply or to give the Commission jurisdiction [over intrastate telecommunications]."²⁴⁰⁹ Cox interprets these cross-references to mean that, "[u]nder this revised framework, the States retain jurisdiction to regulate the 'terms and conditions' of CMRS service delivered to end users and can petition the Commission to regulate CMRS rates when CMRS becomes a substitute for landline telephone service," but that "[i]n the meantime, CMRS is a wholly interstate service and any interconnection to a CMRS provider, regardless of the source, is an

²⁴⁰³ See, e.g., Cox comments in CC Docket No. 95-185 at 43-44; CTIA comments in CC Docket No. 95-185 at 62; Omnipoint comments at 12; Vanguard Cellular comments at 15.

²⁴⁰⁴ Cox comments in CC Docket No. 95-185 at 43-44.

²⁴⁰⁵ *Id.* at 44.

²⁴⁰⁶ *Id.* at 39 n.77. See also, e.g., Comcast comments in CC Docket No. 95-185 at 27; PageNet comments in CC Docket No. 95-185 at 37-38.

²⁴⁰⁷ *Id.*

²⁴⁰⁸ 47 U.S.C. § 332(c)(3)(A) (emphasis added).

²⁴⁰⁹ 47 U.S.C. § 152(b) (emphasis added).

interconnection governed by the FCC's interstate jurisdiction under Section 201 of the Communications Act.²⁴¹⁰

1019. Some parties further argue that section 332(c)(1)(B) gives the Commission exclusive jurisdiction over LEC-to-CMRS interconnection rates.²⁴¹¹ Cox argues that section 332(c)(1)(B) expands the Commission's jurisdiction over CMRS by authorizing the Commission to order any common carrier, regardless of whether it is an intrastate or interstate carrier, to establish physical connections with any CMRS provider. Section 332(c)(1)(B) thus shows, according to Cox, "Congress' intent that the Commission be given full jurisdiction to regulate *all* aspects of CMRS, including interconnection to and from CMRS providers."²⁴¹² Airtouch states that the Commission's section 201 jurisdiction is unaffected by Section 332(c)(1)(B) "except to the extent that the Commission is required to respond to [any CMRS provider's interconnection] request," and thus, section 332(c)(1)(B) does expand the Commission's section 201 authority, but only to the extent that LEC-CMRS interconnection - interstate and/or intrastate - is involved.²⁴¹³ CTIA contends that section 332(c)(3) must be read in a way that does not result in a one-sided regulatory scheme for LEC-to-CMRS interconnection and CMRS-to-LEC interconnection.²⁴¹⁴ Thus, according to CTIA, since section 332(c)(3) clearly preempts state regulation of interconnection rates charged *by* CMRS providers, it also preempts state regulation of interconnection rates charged *to* CMRS providers by LECs.²⁴¹⁵

1020. Some parties contend that, because CMRS providers need interconnection to enter the market, all state regulation of interconnection affecting CMRS (including the intrastate rates charged by LECs) is entry regulation and therefore preempted under section 332(c)(3).²⁴¹⁶ Other commenters argue that section 253(e), which provides that "[n]othing in this section shall affect the application of section 332(c)(3) to commercial mobile service

²⁴¹⁰ Cox comments in CC Docket No. 95-185 at 38-39.

²⁴¹¹ See, e.g., CTIA comments in Docket 95-185 at 62; Cox comments in CC Docket No. 95-185 at 44 n.78; Comcast comments in CC Docket No. 95-185 at 32.

²⁴¹² Cox comments in CC Docket No. 95-185 at 39 n.78 (emphasis in original).

²⁴¹³ Airtouch comments at 6; *Ex Parte* letter from Kathleen Q. Abernathy, Airtouch, to William F. Caton, Acting Secretary, FCC, July 18, 1996, at 1-2.

²⁴¹⁴ CTIA comments in CC Docket No. 95-185 at 73.

²⁴¹⁵ *Id.*

²⁴¹⁶ Omnipoint comments in CC Docket No. 95-185 at 13 (disparate state regulation of interconnection would serve as a prohibited state barrier to entry under section 332(c)(3)); Celpage comments in CC Docket No. 95-185 at 11-12 (inconsistent state regulation of LEC-CMRS interconnection rates would create barriers to entry).

providers," demonstrates the Commission's exclusive jurisdiction over CMRS interconnection rates.²⁴¹⁷ CTIA argues that, "to apply Sections 251 and 252 to the LEC-CMRS relationship in place of Section 332, the Commission would effectively strip Section 332 of any meaning."²⁴¹⁸ Several parties also cite to the legislative history of both the 1993 Budget Act and the 1996 Act as support for their claims that section 332 governs LEC-CMRS interconnection arrangements.²⁴¹⁹ Some commenters note that the 1996 Act did not explicitly repeal section 332, and state that implicit repeals are disfavored under principles of statutory construction.²⁴²⁰ In addition, Cox argues that the exception in section 271(c) for cellular providers suggests that Congress considers cellular service to be in an entirely different competitive market from landline local exchange service, thus preserving the Commission's exclusive jurisdiction over LEC-CMRS interconnection granted by the 1993 Budget Act.²⁴²¹

1021. Incumbent LECs and other parties, on the other hand, argue that section 251 controls interconnection between CMRS providers and incumbent LECs.²⁴²² Several of these parties contend that section 332 only governs the rates CMRS providers charge their end users, not the rates that LECs or CMRS providers charge other telecommunications carriers for interconnection.²⁴²³ NYNEX claims that, while section 332(c)(1)(B) addresses the establishment of physical interconnection, it does not address particular compensation arrangements for interconnection between carriers, which Congress has now addressed in

²⁴¹⁷ See, e.g., PageNet comments at 29; *Ex Parte* letter in CC Docket No. 95-185 from Werner K. Hartenberger and Laura H. Phillips, Counsel for Cox Enterprises, Inc., to William F. Caton, Acting Secretary, FCC, February 28, 1996, at 8 (Cox Feb. 28 *Ex Parte*); see also Nextel reply at 5.

²⁴¹⁸ CTIA comments at 59-60.

²⁴¹⁹ See e.g., Cox comments at 43-44; *Ex Parte* letter in CC Docket No. 95-185 from Robert F. Roche, CTIA, to William F. Caton, Acting Secretary, FCC, February 28, 1996, at 1.

²⁴²⁰ See, e.g., Cox reply in CC Docket No. 95-185 at 69-70.

²⁴²¹ Cox Feb. 28 *Ex Parte* in CC Docket No. 95-185 at 8. Section 271(c)(1)(A) provides that, as one of the preconditions for BOC entry into the in-region, interLATA services market, a BOC must demonstrate the presence of a facilities-based competitor that provides telephone exchange service to residential and business subscribers. This section further provides that, "[f]or the purpose of this subparagraph, services provided pursuant to subpart K of part 22 of the Commission's regulations [cellular], . . . shall not be considered to be telephone exchange services." 47 U.S.C. § 271(c)(1)(A).

²⁴²² See, e.g., USTA comments at 66-67; NYNEX comments at 23; PacTel comments at 83, reply at 38; Bell Atlantic/NYNEX Mobile comments at 7; BellSouth comments at 63; Pennsylvania Commission comments at 34.

²⁴²³ See, e.g., PacTel reply at 38; U S West comments at 61; *Ex Parte* letter in CC Docket No. 95-185 from Michael K. Kellogg, Counsel for Bell Atlantic and PacTel, to William F. Caton, Acting Secretary, FCC, February 26, 1996, at 4; BellSouth comments in CC Docket No. 95-185 at 34; Pennsylvania Commission comments at 34-35.

sections 251 and 252.²⁴²⁴ Parties further note that the language in section 332(c)(1), stating that "this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection" expressly limits the Commission's authority to respond to a CMRS provider's request for interconnection and thus does not give the Commission jurisdiction over LEC-CMRS interconnection rates.²⁴²⁵ BellSouth further argues that subjecting CMRS providers' charges for termination of LEC-originated calls to federal preemption would be inconsistent with Congress's determination in the 1996 Act that the terms and conditions of interconnection are to be decided by negotiation among LECs and telecommunications carriers, subject to the state review process.²⁴²⁶

3. Discussion

1022. Several parties in this proceeding argue that sections 251 and 252 provide the exclusive jurisdictional basis for regulation of LEC-CMRS interconnection rates.²⁴²⁷ Other parties assert that sections 332 and 201 provide the exclusive jurisdictional basis for regulation of LEC-CMRS interconnection rates.²⁴²⁸ Some parties have argued that jurisdiction resides concurrently under sections 251 and 252, on the one hand, and under sections 332 and 201 on the other.²⁴²⁹

1023. Sections 251, 252, 332 and 201 are designed to achieve the common goal of establishing interconnection and ensuring interconnection on terms and conditions that are just, reasonable, and fair. It is consistent with the broad authority of these provisions to hold that we may apply sections 251 and 252 to LEC-CMRS interconnection. By opting to proceed under sections 251 and 252, we are not finding that section 332 jurisdiction over interconnection has been repealed by implication, or rejecting it as an alternative basis for jurisdiction. We acknowledge that section 332 in tandem with section 201 is a basis for

²⁴²⁴ NYNEX reply at 13.

²⁴²⁵ Ameritech comments in CC Docket No. 95-185 at 11; BellSouth comments in CC Docket No. 95-185 at 34-35.

²⁴²⁶ BellSouth comments in CC Docket No. 95-185 at 35.

²⁴²⁷ See, e.g., USTA comments at 66-67; NYNEX comments at 23; PacTel comments at 83, reply at 38; Bell Atlantic/NYNEX Mobile comments at 7; BellSouth comments at 63; Pennsylvania Commission comments at 34.

²⁴²⁸ See, e.g., Cox comments in CC Docket No. 95-185 at 43-44; CTIA comments in CC Docket No. 95-185 at 62; Omnipoint comments at 12; Vanguard comments at 15.

²⁴²⁹ See, e.g., AT&T comments in CC Docket No. 95-185 at 28-30; AT&T comments at 42-44; see also PCIA comments in CC Docket No. 95-185 at 23-26; Century Cellunet comments in CC Docket No. 95-185 at 10-14.

jurisdiction over LEC-CMRS interconnection; we simply decline to define the precise extent of that jurisdiction at this time.

1024. As a practical matter, sections 251 and 252 create a time-limited negotiation and arbitration process to ensure that interconnection agreements will be reached between incumbent LECs and telecommunications carriers, including CMRS providers. We expect that our establishment of pricing methodologies and default proxies which may be used as interim rates will help expedite the parties' negotiations and drive voluntary CMRS-LEC interconnection agreements. We also believe that sections 251 and 252 will foster regulatory parity in that these provisions establish a uniform regulatory scheme governing interconnection between incumbent LECs and all requesting carriers, including CMRS providers. Thus, we believe that sections 251 and 252 will facilitate consistent resolution of interconnection issues for CMRS providers and other carriers requesting interconnection.

1025. Although we are applying sections 251 and 252 to LEC-CMRS interconnection at this time, we preserve the option to revisit this determination in the future. We note that Section 332 generally precludes states from rate and entry regulation of CMRS providers, and thus, differentiates CMRS providers from other carriers.²⁴³⁰ We also recognize that, based on the combined record in CC Docket No. 95-185 and CC Docket No. 96-68, there have been instances in which state commissions have treated CMRS providers in a discriminatory manner with respect to the terms and conditions of interconnection.²⁴³¹ Should the Commission determine that the regulatory scheme established by sections 251 and 252 does not sufficiently address the problems encountered by CMRS providers in obtaining interconnection on terms and conditions that are just, reasonable and nondiscriminatory, the Commission may revisit its determination not to invoke jurisdiction under section 332 to regulate LEC-CMRS interconnection rates.

1026. Our decision to proceed under section 251 as a basis for regulating LEC-CMRS interconnection rates should not be interpreted as undercutting our intent to enforce Section 332(c)(3), for example, where state regulation of interconnection rates might constitute regulation of CMRS entry. In such situations, state action might be precluded by either section 332 or section 253. Such circumstances would require a case-by-case evaluation. We note, however, that we are aware of numerous specific state requirements that may constitute CMRS entry or rate regulation preempted by section 332. For example, many states, such as California, require all telecommunications providers to certify that the public convenience and necessity will be served as a precondition to construction and operation of telecommunications

²⁴³⁰ In passing section 332 in 1993, Congress stated that it intended to "foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure." H.R. Report No. 103-11, 103d. Cong., 1st Sess. 260 (1993).

²⁴³¹ See *supra*, Section VII.D.

services within the state.²⁴³² Some states, such as Alaska and Connecticut, also require CMRS providers to certify as service providers other than CMRS in order to obtain the same treatment afforded other telecommunications providers under state law.²⁴³³ Hawaii and Louisiana, in addition to imposing a certification requirement, require CMRS providers and other telecommunications carriers to file tariffs with the state commission.²⁴³⁴ We will not permit entry regulation through the exercise of states' sections 251/252 authority or otherwise. In this regard, we note that states may not impose on CMRS carriers rate and entry regulation as a pre-condition to participation in interconnection agreements that may be negotiated and arbitrated pursuant to sections 251 and 252. We further note that the Commission is reviewing filings made pursuant to section 253 alleging that particular states or local governments have requirements that constitute entry barriers, in violation of section 253. We will continue to review any allegations on an ongoing basis, including any claims that states or local governments are regulating entry or imposing requirements on CMRS providers that constitute barriers to market entry.

²⁴³² CAL. PUBLIC UTILITIES CODE Sections 1001,1005 (West 1995); ALASKA STAT. Section 42.05221 (1995); CONN. GEN. STAT. Section 16-247g (1995); HAW. REV. STAT. Section 269-7.5 (1995); NEB. REV. STAT. Section 86-805 (1995); N.M. STAT. ANN. Section 63-9B-4 (Michie 1996).

²⁴³³ See *In the Matter of Motion for a Declaratory Ruling Concerning Preemption of Alaska Call Routing and Interexchange Certification Regulation as Applies to Cellular Carriers*, File No. WTB/POL 95-2, *Motion for a Declaratory Ruling*, Alaska-3 Cellular d/b/a CellularOne, p.5, para. 11 (filed Sept. 22, 1995); *Decision, Investigation Into Wireless Mutual Compensation Plans*, State of Connecticut, Department of Public Utility control, at 15 (Connecticut Commission Sept. 22, 1995).

²⁴³⁴ HAW. REV. STAT. Section 6-80-29 (1996); see *In re Regulations for Competition in the Local Telecommunications Market*, General Order, Louisiana Public Service Commission, §§ 301, 401 (Louisiana Commission March 15, 1996).

XI. OBLIGATIONS IMPOSED ON LECs BY SECTION 251(b)²⁴³⁵**A. Reciprocal Compensation for Transport and Termination of Telecommunications****1. Statutory Language**

1027. Section 251(b)(5) provides that all LECs, including incumbent LECs, have the duty to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."²⁴³⁶ Section 252(d)(2) states that, for the purpose of compliance by an incumbent LEC with section 251(b)(5), a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless such terms and conditions both: (1) provide for the "mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier," and (2) "determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."²⁴³⁷ That subsection further provides that the foregoing language shall not be construed "to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill and keep arrangements),"²⁴³⁸ or to authorize the Commission or any state to "engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or require carriers to maintain records with respect to the additional costs of such calls."²⁴³⁹ The legislative history indicates that "mutual and reciprocal recovery of costs . . . may include a range of compensation schemes, such as in-kind exchange of traffic without cash payment (known as bill-and-keep arrangements)."²⁴⁴⁰

²⁴³⁵ Additional obligations imposed by section 251(b) are addressed in a separate order. See NPRM at paras. 202-219.

²⁴³⁶ 47 U.S.C. § 251(b)(5).

²⁴³⁷ 47 U.S.C. § 252(d)(2)(A).

²⁴³⁸ *Id.* at § 252(d)(2)(B)(i).

²⁴³⁹ *Id.* at § 252(d)(2)(B)(ii).

²⁴⁴⁰ Joint Explanatory Statement at 7.

2. Definition of Transport and Termination of Telecommunications

a. Background

1028. In the NPRM, we sought comment on whether "transport and termination of telecommunications" under section 251(b)(5) is limited to certain types of traffic.²⁴⁴¹ We noted that the statutory provision appears to encompass telecommunications traffic that originates on the network of one LEC and terminates on the network of a competing provider in the same local service area as well as traffic passing between LECs and CMRS providers.²⁴⁴² We sought comment on whether section 251(b)(5) also encompasses telecommunications traffic passing between neighboring LECs that do not compete with one another.²⁴⁴³ We also observed in the NPRM that section 252(d)(2) is entitled "Charges for Transport and Termination of Traffic," and it could be interpreted to permit separate charges for these two components of reciprocal compensation.²⁴⁴⁴ We sought comment on this issue.

b. Comments

1029. Numerous commenters contend that section 251(b)(5) applies to traffic originating on the network of one LEC and terminating on the network of another LEC, including both the traffic exchanged between competing LECs and traffic exchanged between neighboring LECs that do not compete with one another.²⁴⁴⁵ The Oregon Commission points out that neither section 251 nor any other provision of the Act excludes the transport and termination of telecommunications traffic passing between neighboring LECs that do not compete with one another.²⁴⁴⁶ Several incumbent LECs, however, contend that the requirements imposed on LECs by section 251(b), including reciprocal compensation for transport and termination of traffic, make no sense except in the context of LECs offering service in the same geographic area, because these requirements are relevant only to the competitive relationship between such carriers.²⁴⁴⁷ In addition, several commenters contend that parties and states will need to determine the local service area within which the

²⁴⁴¹ NPRM at para. 231.

²⁴⁴² NPRM at para. 230.

²⁴⁴³ *Id.*

²⁴⁴⁴ NPRM at para. 231.

²⁴⁴⁵ See, e.g., Ohio Commission comments at 68-69; MFS comments at 76; Time Warner comments at 85-86.

²⁴⁴⁶ Oregon Commission comments at 35.

²⁴⁴⁷ PacTel comments at 95-96; NYNEX comments at 85; see also Florida Commission comments at 38-39.

compensation right applies.²⁴⁴⁸ RTC asserts that elimination of multicompany existing extended area service (EAS)²⁴⁴⁹ would cause great rate disruption around the country.²⁴⁵⁰

1030. A wide range of commenters also contend that reciprocal compensation should apply to arrangements between CMRS providers and LECs.²⁴⁵¹ Numerous commenters in the *LEC-CMRS Interconnection* proceeding have argued that CMRS providers do not receive reciprocal compensation for the transport and termination of traffic from incumbent LECs,²⁴⁵² and in some cases incumbent LECs require CMRS providers to compensate the LEC for wireline-originated traffic terminated on their wireless systems.²⁴⁵³ PageNet, however, contends that section 251 is not directly applicable to interconnection arrangements between incumbent LECs and CMRS providers.²⁴⁵⁴ Instead, it argues that incumbent LEC to CMRS interconnection is governed by section 332 of the 1934 Act.²⁴⁵⁵ Several wireless providers argue that neither CMRS nor traditional paging service fits the Act's definition of a local exchange service and, therefore, these services are exempt from section 251(b) requirements.²⁴⁵⁶ Paging companies commented in the *LEC-CMRS Interconnection* proceeding

²⁴⁴⁸ See GTE comments at 54; Continental comments at 12-13 (asserting that a new entrant should not be required to pay toll access charges to terminate its customers within its local calling area); NCTA reply at 17 (arguing that the Commission should reject incumbent LECs' arguments that reciprocal compensation arrangements between incumbent LECs and competitive LECs are only applicable to the termination of incumbent LEC-defined local traffic). *But see* PacTel reply at 48 (arguing that transport and termination does not extend to all intraLATA calls because such a requirement would read access charges out of the Act).

²⁴⁴⁹ EAS is considered an interexchange service between non-competing LECs.

²⁴⁵⁰ RTC reply at v; *see also* GVNW comments at 41 (Historical interconnection arrangements between neighboring incumbent LECs should not be used as a basis for determining appropriate compensation between carriers competing in the same service areas under a statutory mandate to base compensation on the cost of terminating a call).

²⁴⁵¹ *See, e.g.*, Ohio Commission comments at 68-69; NYNEX comments at 85; ProNet comments at 11-12.

²⁴⁵² *See, e.g.*, RCC comments in CC Docket No. 95-185 at 5; 360 Degrees comments in CC Docket No. 95-185 at 3; Western Wireless comments in CC Docket No. 95-185 at 13; Omnipoint reply in CC Docket No. 95-185 at 3-7.

²⁴⁵³ *See, e.g.*, CMT Partners comments in CC Docket No. 95-185 at 4; Century Cellunet comments in CC Docket No. 95-185 at 4; Nextel Communications comments in CC Docket No. 95-185 at 5; Centennial Cellular Corp. comments in CC Docket No. 95-185 at 9.

²⁴⁵⁴ PageNet comments at 12-14.

²⁴⁵⁵ *Id.*; *see also* PCIA comments at 1-12; Mobilemedia comments at 5-12; Arch comments at 17.

²⁴⁵⁶ *See, e.g.*, ProNet comments at 7; Arch comments at 17; BANM comments at 2.

that, despite the fact that paging companies must terminate incoming incumbent LEC calls, the paging companies pay the LECs for call origination, rather than receive compensation for call termination.²⁴⁵⁷ They also contend that paging companies should be permitted to charge reasonable call termination fees to the LECs.²⁴⁵⁸

1031. Incumbent LECs as well as other commenters contend that transport and termination should be treated as two distinct functions.²⁴⁵⁹ They generally define transport as carrying traffic between switches within a network, while termination is characterized as delivering traffic through the last end-office switch to the end user.²⁴⁶⁰ The Texas Public Utility Counsel argues that, to the extent that transport functions and call termination functions have different cost structures, the Act would mandate a two-part pricing structure.²⁴⁶¹ U S West notes that, while there is no natural substitute for termination, transport is interoffice and would generally be interchangeable with similar network elements or tariffed access services.²⁴⁶² In addition, Citizens Utilities contends that, depending on the location of the physical interconnection point between two carriers and each carrier's network design, the terminating carrier may or may not perform any transport service in the call delivery process.²⁴⁶³ Therefore, it argues that the transport function logically should be unbundled from the termination function.²⁴⁶⁴ USTA and potential new entrants, however, argue that transport and termination describe a single function, the costs of which should be recovered from a single charge for purposes of reciprocal compensation.²⁴⁶⁵ GST believes that subdivision of transport and termination as a means of applying asymmetrical rate structures

²⁴⁵⁷ See PageNet reply in CC Docket No. 95-185 at 5.

²⁴⁵⁸ See, e.g., PageNet comments in CC Docket No. 95-185 at 25-29.

²⁴⁵⁹ See, e.g., U S West comments at 69; PacTel comments at 97; GTE comments at 18; Florida Commission comments at 39.

²⁴⁶⁰ See, e.g., U S West comments at 69; PacTel comments at 97; GTE comments at 18; BellSouth comments at 71.

²⁴⁶¹ Texas Public Utility Counsel comments at 49-50; see also Arch comments at 17-18; Florida Commission comments at 39.

²⁴⁶² U S West comments at 69. Similarly, CFA/CU argues that the availability of termination for new entrants is a monopoly enjoyed by the incumbent LEC as a legacy of its historic monopoly. CFA/CU comments at 52-53; see also MFS reply at 17.

²⁴⁶³ Citizens Utilities comments at 29; see also BellSouth comments at 71.

²⁴⁶⁴ *Id.*

²⁴⁶⁵ USTA comments at 80; see also GST comments at 35-38; MFS comments at 76-77; Time Warner comments at 86-88; TCI comments at 27-28.

conflicts with the statute's command of reciprocal compensation, and gives LECs incentives to tilt the balance of payment through their network design decisions.²⁴⁶⁶

1032. In addition, Sprint contends that section 251(b)(5) arguably applies to transport and termination of toll traffic as well as local traffic.²⁴⁶⁷ Sprint contends, however, that in the context of section 252(d)(2), which establishes a pricing rule for reciprocal compensation where one of the carriers is an incumbent LEC, it appears that Congress intended to confine to local traffic the obligation of transport and termination.²⁴⁶⁸ Several other commenters also maintain that toll traffic should remain subject to access charges and not section 251(b)(5) obligations, at least until access charge reform can be implemented.²⁴⁶⁹ RTC argues that Congress made it clear that it did not intend the Act to change the access charge regime.²⁴⁷⁰ Frontier, however, contends that Sprint's reliance on the wording of section 252(d)(2) as limiting the scope of section 251(b)(5) is simply misguided.²⁴⁷¹ Frontier argues that, at best, section 252(d)(2)'s silence regarding the pricing by an incumbent LEC simply meant that Congress did not intend to constrain the Commission decisions in the pricing of transport and termination by a non-incumbent LEC under section 252(d)(2).²⁴⁷² In sum, Frontier contends that the general principles of mutual and reciprocal compensation under section 251(b)(5) would apply to all traffic, while section 252(d)(2) applies to incumbent LEC pricing of mutual compensation involving any additional costs of transport and termination.²⁴⁷³

²⁴⁶⁶ GST comments at 35-38.

²⁴⁶⁷ Sprint comments at 76.

²⁴⁶⁸ *Id.* at 76-77.

²⁴⁶⁹ See, e.g., Alabama Commission comments at 32-33; PacTel comments at 95-96, 98, reply at 48; MFS comments at 76.

²⁴⁷⁰ RTC reply at 9.

²⁴⁷¹ Frontier reply at 19.

²⁴⁷² *Id.*

²⁴⁷³ *Id.*

c. Discussion**(1) Distinction between "Transport and Termination" and Access**

1033. We recognize that transport and termination of traffic, whether it originates locally or from a distant exchange, involves the same network functions. Ultimately, we believe that the rates that local carriers impose for the transport and termination of local traffic and for the transport and termination of long distance traffic should converge. We conclude, however, as a legal matter, that transport and termination of local traffic are different services than access service for long distance telecommunications. Transport and termination of local traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 252(d)(2), while access charges for interstate long-distance traffic are governed by sections 201 and 202 of the Act. The Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic.

1034. We conclude that section 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area, as defined in the following paragraph. We disagree with Frontier's contention that section 251(b)(5) entitles an IXC to receive reciprocal compensation from a LEC when a long-distance call is passed from the LEC serving the caller to the IXC. Access charges were developed to address a situation in which three carriers -- typically, the originating LEC, the IXC, and the terminating LEC -- collaborate to complete a long-distance call. As a general matter, in the access charge regime, the long-distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service.²⁴⁷⁴ By contrast, reciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call. In this case, the local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call. This reading of the statute is confirmed by section 252(d)(2)(A)(i), which establishes the pricing standards for section 251(b)(5). Section 251(d)(2)(A)(i) provides for "recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier."²⁴⁷⁵ We note that our conclusion that long distance traffic is not subject to the transport and termination provisions of section 251 does not in any way disrupt the ability of IXCs to terminate their interstate long-distance traffic on LEC networks. Pursuant to section

²⁴⁷⁴ In addition, both the caller and the party receiving the call pay a flat-rated interstate access charge -- the end-user common line charge -- to the respective incumbent LEC to whose network each of these parties is connected.

²⁴⁷⁵ 47 U.S.C. § 252(d)(2)(A)(i).

251(g), LECs must continue to offer tariffed interstate access services just as they did prior to enactment of the 1996 Act. We find that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic.

1035. With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs. Traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges. We expect the states to determine whether intrastate transport and termination of traffic between competing LECs, where a portion of their local service areas are not the same, should be governed by section 251(b)(5)'s reciprocal compensation obligations or whether intrastate access charges should apply to the portions of their local service areas that are different. This approach is consistent with a recently negotiated interconnection agreement between Ameritech and ICG that restricted reciprocal compensation arrangements to the local traffic area as defined by the state commission.²⁴⁷⁶ Continental Cablevision, in an *ex parte* letter, states that many incumbent LECs offer optional expanded local area calling plans, in which customers may pay an additional flat rate charge for calls within a wider area than that deemed as local, but that terminating intrastate access charges typically apply to calls that originate from competing carriers in the same wider area.²⁴⁷⁷ Continental Cablevision argues that local transport and termination rates should apply to these calls. We lack sufficient record information to address the issue of expanded local area calling plans; we expect that this issue will be considered, in the first instance, by state commissions. In addition, we expect the states to decide whether section 251(b)(5) reciprocal compensation provisions apply to the exchange of traffic between incumbent LECs that serve adjacent service areas.

1036. On the other hand, in light of this Commission's exclusive authority to define the authorized license areas of wireless carriers, we will define the local service area for calls to or from a CMRS network for the purposes of applying reciprocal compensation obligations under section 251(b)(5).²⁴⁷⁸ Different types of wireless carriers have different FCC-authorized

²⁴⁷⁶ See letter from Albert H. Kramer, Dickstein, Shapiro, Morin & Oshinsky LLP to John Nakahata, Senior Legal Advisor to the Chairman, FCC, July 11, 1996.

²⁴⁷⁷ Letter from Brenda L. Fox, Vice President, Federal Relations, Continental Cablevision, to Robert Pepper, Chief, Office of Plans and Policy, FCC, July 22, 1996, attached to Letter from Donna N. Lampert, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., to William F. Caton, Acting Secretary, FCC, July 22, 1996.

²⁴⁷⁸ See also *infra*, Section XI.A.c.3.

licensed territories, the largest of which is the "Major Trading Area" (MTA).²⁴⁷⁹ Because wireless licensed territories are federally authorized, and vary in size, we conclude that the largest FCC-authorized wireless license territory (*i.e.*, MTA) serves as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5) as it avoids creating artificial distinctions between CMRS providers. Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges.

1037. We conclude that section 251(b)(5) obligations apply to all LECs in the same state-defined local exchange service areas, including neighboring incumbent LECs that fit within this description. Contrary to the arguments of NYNEX and Pacific Telesis, neither the plain language of the Act nor its legislative history limits this subsection to the transport and termination of telecommunications traffic between new entrants and incumbent LECs. In addition, applying section 251(b)(5) obligations to neighboring incumbent LECs in the same local exchange area is consistent with our decision that all interconnection agreements, including agreements between neighboring LECs, must be submitted to state commissions for approval pursuant to section 252(e).²⁴⁸⁰

1038. Under section 252, neighboring states may establish different rate levels for transport and termination of traffic.²⁴⁸¹ In cases in which territory in multiple states is included in a single local service area, and a local call from one carrier to another crosses state lines, we conclude that the applicable rate for any particular call should be that established by the state in which the call terminates. This provides an administratively convenient rule, and termination of the call typically occurs in the same state where the terminating carrier's end office switch is located and where the cost of terminating the call is incurred.

(2) Distinction between "Transport" and "Termination"

1039. We conclude that transport and termination should be treated as two distinct functions. We define "transport," for purposes of section 251(b)(5), as the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party (or equivalent facility provided by a non-incumbent carrier). Many alternative

²⁴⁷⁹ See Rand McNally, Inc., 1992 *Commercial Atlas & Marketing Guide* 38-39 (1992).

²⁴⁸⁰ See *supra*, Section III.D.

²⁴⁸¹ We discuss the methodology states should follow in establishing transport and termination rates *infra*, Section IX.A.3.c.(3).

arrangements exist for the provision of transport between the two networks. These arrangements include: dedicated circuits provided either by the incumbent LEC, the other local service provider, separately by each, or jointly by both; facilities provided by alternative carriers; unbundled network elements provided by incumbent LECs; or similar network functions currently offered by incumbent LECs on a tariffed basis. Charges for transport subject to section 251(b)(5) should reflect the forward-looking cost of the particular provisioning method.

1040. We define "termination," for purposes of section 251(b)(5), as the switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises. In contrast to transport, for which some alternatives exist, alternatives for termination are not likely to exist in the near term. A carrier or provider typically has no other mechanism for delivering traffic to a called party served by another carrier except by having that called party's carrier terminate the call. In addition, forward-looking costs are calculated differently for the transport of traffic and the termination of traffic, as discussed above in the unbundled elements section.²⁴⁸² As such, we conclude that we need to treat transport and termination as separate functions -- each with its own cost. With respect to GST's contention that separate charges for transport and termination of traffic will allow incumbent LECs to "game" the system through network design decisions, we conclude in the interconnection section above that interconnecting carriers may interconnect at any technically feasible point.²⁴⁸³ We find that this sufficiently limits LECs' ability to disadvantage interconnecting parties through their network design decisions.

(3) CMRS-Related Issues

1041. Section 251(b)(5) obligates LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic. Although section 252(b)(5) does not explicitly state to whom the LEC's obligation runs, we find that LECs have a duty to establish reciprocal compensation arrangements with respect to local traffic originated by or terminating to any telecommunications carriers. CMRS providers are telecommunications carriers and, thus, LECs' reciprocal compensation obligations under section 251(b)(5) apply to all local traffic transmitted between LECs and CMRS providers.

1042. We conclude that, pursuant to section 251(b)(5), a LEC may not charge a CMRS provider or other carrier for terminating LEC-originated traffic. Section 251(b)(5) specifies that LECs and interconnecting carriers shall compensate one another for termination of traffic on a reciprocal basis. This section does not address charges payable to a carrier that

²⁴⁸² See *infra*, Section XI.A.3.c.(3).

²⁴⁸³ See *supra*, Section VII.B.2.

originates traffic. We therefore conclude that section 251(b)(5) prohibits charges such as those some incumbent LECs currently impose on CMRS providers for LEC-originated traffic. As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge.

1043. As noted above, CMRS providers' license areas are established under federal rules, and in many cases are larger than the local exchange service areas that state commissions have established for incumbent LECs' local service areas.²⁴⁸⁴ We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges. Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC, with the exception of certain interstate interexchange service provided by CMRS carriers, such as some "roaming" traffic that transits incumbent LECs' switching facilities, which is subject to interstate access charges.²⁴⁸⁵ Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.²⁴⁸⁶

1044. CMRS customers may travel from location to location during the course of a single call, which could make it difficult to determine the applicable transport and termination

²⁴⁸⁴ See 47 C.F.R. §§ 22.911, 24.202; see also PCIA comments in CC Docket No. 95-185 at 21-22; Letter from Leonard J. Kennedy, on behalf of Comcast Cellular Communications, to William Caton, Acting Secretary, FCC, July 25, 1996.

²⁴⁸⁵ "[S]ome cellular carriers provide their customers with a service whereby a call to a subscriber's local cellular number will be routed to them over interstate facilities when the customer is "roaming" in a cellular system in another state. In this case, the cellular carrier is providing not local exchange service but interstate, interexchange service. In this and other situations where a cellular company is offering interstate, interexchange service, the local telephone company providing interconnection is providing exchange access to an interexchange carrier and may expect to be paid the appropriate access charge Therefore, to the extent that a cellular operator does provide interexchange service through switching facilities provided by a telephone company, its obligation to pay carrier's carrier [i.e., access] charges is defined by § 69.5(b) of our rules." *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 59 RR 2d 1275, 1284-85 n.3 (1986). See also *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1497-98 (1994) (concluding that there should be no distinction between incumbent LECs' interconnection arrangements with cellular carriers and those with other CMRS providers).

²⁴⁸⁶ See also, *supra*, XI.A.2.c.(1).